

## **EXHIBIT A**

01IJPINC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 379 (PKC)

5 MAURICIO HERNANDEZ PINEDA,  
6 JUAN ORLANDO HERNANDEZ,  
7 JUAN CARLOS BONILLA VALLADARES,

8 Defendants.

Conference

9 -----x

10 New York, N.Y.  
11 January 18, 2024  
12 11:00 a.m.

13 Before:

14 HON. P. KEVIN CASTEL,

District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the  
18 Southern District of New York

ELINOR TARLOW

DAVID ROBLES

19 KYLE WIRSHBA

JACOB GUTWILLIG

20 Assistant United States Attorneys

21 RICHARD J. MA

CORY MICHAEL GARCIA

22 Attorneys for Defendant Mauricio Hernandez Pineda

-and-

23 ZEMAN & WOMBLE, LLP

24 BY: KEN WOMBLE

01IJPINC

APPEARANCES CONTINUED

RAYMOND L. COLON  
SABRINA P. SHROFF

Attorneys for Defendant Juan Orlando Hernandez

RAOUL ZALTZBERG  
BERNARDA VILLALONA  
CESAR DE CASTRO

Attorneys for Defendant Juan Carlos Bonilla Valladares

Also Present:

Francisco Olivero, Interpreter (Spanish)  
Gabriel Mitre, Interpreter (Spanish)  
Kayla Collins, Paralegal

OIIJPINC

(Case called)

MS. TARLOW: Elinor Tarlow for the government.

I'm joined at counsel table by Assistant United States Attorney David Robles, Kyle Wirshba, Jacob Gutwillig, and paralegal specialist Kayla Collins.

THE COURT: Good morning to you all.

And for Defendant Hernandez?

MR. COLON: Good morning, your Honor.

Raymond Colon. Seated next to my right is Ms. Shroff on behalf of Mr. Orlando Hernandez Alvarado, sir.

THE COURT: All right. Thank you.

MS. SHROFF: Good morning, your Honor.

THE COURT: Good morning, Ms. Shroff.

MR. ZALTZBERG: Good morning, your Honor.

Raoul Zaltzberg for Mr. Bonilla. Seated to my right is my co-counsel, Bernarda Villalona.

THE COURT: Mr. Bonilla, raise your hand if you can, please. Thank you. Good.

MR. MA: Good morning, Judge Castel.

Richard Ma, appearing on behalf of defendant number three, Mauricio Hernandez Pineda seated in the well in yellow furthest from you.

MR. WOMBLE: Good morning, your Honor.

Ken Womble, also for Mr. Hernandez Pineda.

MR. GARCIA: Good morning, your Honor.

01IJPINC

1 Cory Garcia for Mr. Hernandez Pineda.

2 THE COURT: Good morning to you all.

3 So this is the final retrial conference, and I thought  
4 I would begin with Defendant Pineda's motion to compel  
5 discovery. And I guess the first question I would have,  
6 Mr. Ma, is do you have anything you wish to add to your motion  
7 papers or do you want to rest on your motion papers,  
8 Mr. Womble, Mr. Ma?

9 MR. MA: Judge, we will rest on our papers. We will  
10 certainly answer any questions you have for us.

11 THE COURT: Thank you.

12 And from the standpoint of the government?

13 MS. TARLOW: Nothing further from the government, your  
14 Honor.

15 THE COURT: All right. So Defendant Pineda moves for  
16 an order that the government produce all *Brady* material in its  
17 possession. He also moves to compel discovery seeking records  
18 relating to the criminal record of Giovanni Rodriguez, at least  
19 that's the pseudonym that he is going by in this case. And  
20 Pineda argues that the review of discovery demonstrates  
21 numerous inconsistencies that constitute exculpatory evidence  
22 the defense is entitled to review under *Brady*.

23 He asserts that when reviewing the statements of  
24 cooperating witness Diaz Morales, he's discovered that Diaz  
25 Morales' account of interactions with Pineda were so

01IJPINC

1 inconsistent that they implicate *Brady* obligations. Later on,  
2 Pineda states that he does not seek a remedy for a present  
3 *Brady* violation and only wishes to point out that, had the  
4 government provided this information too close to trial or  
5 failed to disclose it, it would have been a *Brady* violation.

6 The government responds that Pineda acknowledges  
7 there's been no *Brady* violation, as the government provided the  
8 defendant with evidence far in advance of trial. It also  
9 contends that the purported inconsistencies are merely  
10 clarifications during proffer sessions.

11 So to the extent he's arguing a *Brady* violation, that  
12 application is denied. And certainly with regard to 3500  
13 material and Giglio material, the government understands its  
14 obligations and its obligations under *Brady* and has been orally  
15 warned, and there's a written order on that effect.

16 Pineda also seeks to compel discovery of records  
17 relating to the criminal record of Giovanni Rodriguez and other  
18 materials pertinent to the credibility of government witnesses,  
19 and he says that the government has not made a good-faith  
20 effort to obtain these records relating to, basically, events  
21 occurring in Honduras, Rodriguez's 2009 arrest and prosecution  
22 for stealing cocaine while on duty as a police officer, a 2009  
23 murder of General Julian Aristides Gonzalez, planned by  
24 Rodriguez and others, and the 2013 assassination of a Honduran  
25 prosecutor. Pineda also requests any other materials pertinent

01IJPINC

1 to impeachment or credibility of witnesses.

2 The government responds that it's under no obligation  
3 to seek out potential impeachment material from other law  
4 enforcement agencies, much less foreign governments that are  
5 not part of the prosecution team. Further, the government  
6 states that it requested the police records and records of  
7 undercover investigations for Rodriguez in 2016 and provided  
8 the materials it received from the Honduran government to  
9 Pineda in 2021 and that Pineda has been in possession of these  
10 materials and the Tony Hernandez trial transcript which  
11 discusses Rodriguez's arrest and involvement in the murder.

12 So I am denying this request for multiple reasons.  
13 First of all, Pineda has had the documents since 2021 and  
14 didn't request additional material till the end of  
15 November 2023. But more importantly, I agree that the  
16 government has complied with its disclosure obligations. The  
17 Honduran government is not part of the government's prosecution  
18 team, and the government's disclosure obligations only extend  
19 to the prosecution team. And the government has made a  
20 good-faith effort to obtain materials from the Honduran  
21 government, so I'm going to deny that request.

22 Now, the government seeks to implement jury-related  
23 protective measures. I'm not quite sure I understand what the  
24 government has in mind. It is my practice when I question  
25 jurors in every case, including an auto wreck on the Cross

01IJPINC

1 Bronx Expressway, a civil suit, to refer to jurors by the juror  
2 number because I find that jurors tend to prefer it. It avoids  
3 the embarrassment to the Court of mispronouncing someone's  
4 name, and it also makes it easier for lawyers to keep track of  
5 who they may want to move to challenge for cause or exercise a  
6 peremptory. So I find the use of numbers works well for  
7 everyone. Are you asking me to do anything different than  
8 that?

9 MS. TARLOW: No, your Honor.

10 THE COURT: Okay. Well, that's what I plan to do and  
11 I've done, I think, in every single case that I've ever tried.  
12 It has happened on occasion that there's a reason why a juror's  
13 name comes out, and that's absolutely fine. And this has  
14 nothing to do with anything to do with jury lists. This is  
15 only my practice in the jury selection. And of course, I will  
16 make no mention to the jury of taking any special procedure. I  
17 need not do that, and I don't intend to do that.

18 Now, the government also seeks to impose protective  
19 measures for four of its witnesses. And the only objection I  
20 have to this is that in the case of one of the witnesses, it's  
21 been asserted that their identity is known, has been out there  
22 somewhere in the press, but that's not a reason not to grant  
23 the measure as to the two individuals, a Honduran law  
24 enforcement officer, and yet another individual. So the four  
25 names are in the motion papers. I'm going to grant the



01IJPINC

1 government's request as to these four witnesses because they  
2 and their families do face a serious risk of actual harm from  
3 testifying.

4 Two witnesses with valuable information about the drug  
5 trafficking conspiracy at issue in this trial have been  
6 murdered in Honduras. Nery Lopez Sanabria, a drug trafficker  
7 incarcerated in Honduras following the seizure of the drug  
8 ledger that listed the names of Tony Hernandez and Juan Orlando  
9 Hernandez discussed below was murdered in prison in Honduras.  
10 The murder occurred shortly after the drug ledger was admitted  
11 at Tony Hernandez's trial and Tony Hernandez was found guilty.

12 In February of 2021, Normando Rafael Lozano, a  
13 co-conspirator of Tony Hernandez identified at his trial, was  
14 murdered. So I'm going to permit the four witnesses to testify  
15 under a pseudonym, and, number one, the true identity will be  
16 identified to the defendants, has been identified to the  
17 defendants so they can investigate and conduct a comprehensive  
18 cross-examination. And unless the need arises, it does not  
19 appear to me that I need to inform the jury that the witnesses  
20 are testifying under a pseudonym.

21 Is there any disagreement on that from the government?

22 MS. TARLOW: No, your Honor.

23 THE COURT: From any defendant?

24 All right. So that's what we'll do.

25 The government seeks to admit evidence of

01IJPINC

1 narcotics-related political corruption, including use of drug  
2 proceeds to fund political campaigns and bribe politicians and  
3 law enforcement officers.

4 Is there any defendant who wishes to be heard orally  
5 on this point? All right.

6 The government have anything further to add?

7 MS. TARLOW: No, your Honor.

8 THE COURT: All right. So specifically, the  
9 government intends to offer evidence of bribes paid to protect  
10 drug shipments. I could go through the examples. They're in  
11 the motion papers, testimony from Giovanni Rodriguez that  
12 Pineda bribed him to provide information about potential law  
13 enforcement actions, testimony from Alex Ardon that Pineda  
14 received \$200,000 for protecting Ardon and Tony Hernandez's  
15 drug shipments on numerous occasions over multiple years.

16 There are a series of examples set forth in the  
17 government's motion papers, and I'm not going to recount each  
18 and every one of them, testimony from Diaz Morales that he paid  
19 Bonilla's nephews hundreds of thousands of dollars in drug  
20 proceeds for them to secure a safe passage for cocaine  
21 shipments, and the nephews paid some of those proceeds to  
22 Bonilla and Tony Hernandez, and testimony from a cooperating  
23 witness detailing payments of 2 million in drug trafficking  
24 proceeds for Juan Orlando's campaign to become president of  
25 Honduran National Congress and Pepe Lobo's campaign for

01IJPINC

1 president, monthly payments to Tony Hernandez to ensure safe  
2 passage of cocaine, a million and a half U.S. bribes to  
3 politicians in Copan to support Juan Orlando, a million in cash  
4 that El Chapo provided to Tony Hernandez.

5 The government argues it's direct evidence of the  
6 charged conspiracy. An act that is alleged to have been done  
7 in furtherance of the alleged conspiracy is not another act  
8 within the meaning of Rule 404(b), rather, it is part of the  
9 very act charged. Direct evidence includes evidence that is  
10 inextricably intertwined with the evidence regarding the  
11 charged offense or evidence that completes the story of the  
12 crime on trial.

13 Take a look at the Second Circuit's Gonzalez decision  
14 in 1997 and *Concepcion* in the Second Circuit in 1992. The  
15 alleged conspiracy in this case was the import of large amounts  
16 of cocaine into the U.S. from and through Honduras. And the  
17 government alleges that Juan Orlando's role in the conspiracy  
18 was to use his political power to protect drug traffickers from  
19 investigation in Honduras and extradition to the United States  
20 and to direct the police and military of Honduras to protect  
21 certain drug shipments in Honduras.

22 So it seems to me that this evidence is evidence in  
23 furtherance of the conspiracy. It's evidence of the crime  
24 charged, and I need not reach the government's alternative  
25 argument that it's 404(b) evidence.

01IJPINC

1           Now, I'm going to start with statements made to  
2 cooperating witnesses by the defendants and/or their  
3 co-conspirators. Anybody wish to be heard on this topic or do  
4 they rely on their papers? If anybody wishes to add anything  
5 to their papers, please so indicate.

6           The government seeks to admit two statements which  
7 took place in 2007 between Diaz Morales and a co-conspirator.  
8 First, Diaz Morales told the co-conspirator that Pineda  
9 provided security for drug shipments, and Pineda provided Diaz  
10 Morales with information concerning law enforcement operations  
11 to protect Diaz Morales's drug trafficking activities. Second,  
12 Diaz Morales told the co-conspirator that Pineda was the man's  
13 cousin, a reference to the fact that Pineda is a cousin of Juan  
14 Orlando.

15           The government argues that these statements are not  
16 hearsay under 801(d)(2)(E). And I'm going to admit those  
17 statements under 801(d)(2)(E).

18           Under the rule, a statement is not hearsay if offered  
19 against an opposing party and made to the parties'  
20 co-conspirator during and in furtherance of the conspiracy. To  
21 admit a statement pursuant to this rule, the Court must find by  
22 a preponderance of the evidence that, one, a conspiracy that  
23 included the declarant and the defendant existed, and, two, the  
24 statement was made during the course of and in furtherance of  
25 the conspiracy. These familiar principals are laid out in the

01IJPINC

1 *Bourjaily* case decided by the Supreme Court. 483 U.S. (1987).

2 And so that is, in fact, the case, and statements are  
3 going to be admitted. Diaz Morales, co-conspirator, Pineda  
4 were part of the same conspiracy to import cocaine, the  
5 statements appear to be made in furtherance of that conspiracy  
6 because Diaz Morales' statements convinced the co-conspirator  
7 that Pineda could be trusted to work with him to protect Diaz  
8 Morales' drug shipments.

9 Now, these same principles apply with regard to other  
10 statements that have been tendered by the government, including  
11 five statements that the government seeks to offer through Alex  
12 Ardon's testimony against Pineda. And I need not recount the  
13 five statements. They're set forth in the motion papers, but I  
14 conclude that they are admissible under 801(d)(2)(E). And they  
15 also are admissible as statements against penal interest of the  
16 declarant under 804(b)(3). So I'm going to admit these  
17 statements.

18 The preponderance of the evidence is likely to  
19 establish that Ardon, Pineda, Tony Hernandez, Juan Orlando, and  
20 El Chapo were members of the charged large-scale conspiracy to  
21 import cocaine into the United States. Pineda provided  
22 protection for the drug shipments of Ardon and Tony Hernandez,  
23 which shipments, including shipments of El Chapo's cocaine.  
24 And Tony Hernandez told El Chapo that he would be able to  
25 protect El Chapo's drug shipments and prevent Ardon's

01IJPINC

1 extradition if Juan Orlando was elected president. And Juan  
2 Orlando through Tony Hernandez told El Chapo they needed  
3 1 million for his campaign. So the statements between Alex  
4 Ardon and Tony Hernandez about Pineda establish Pineda's  
5 credibility and trustworthiness to Alex Ardon.

6 Other statements involved the logistics of how to ship  
7 and protect cocaine through Honduras or facilitated the  
8 continuation of El Chapo's cocaine shipments through Honduras  
9 by reassuring him that the loads would be protected if Juan  
10 Orlando won the presidency, and one of the statements involved  
11 the protection of Alex Ardon from extradition. So I'm  
12 admitting them on the basis stated.

13 Likewise, the government seeks to admit four  
14 statements through the testimony of Diaz Morales in or around  
15 2007. A co-conspirator told Diaz Morales that on at least one  
16 occasion Giovanni Rodriguez and Pineda were both providing  
17 protection for one of the co-conspirator's cocaine shipments  
18 and recognized each other. At the time, the co-conspirator  
19 expressed concern that by seeing Pineda, Giovanni Rodriguez  
20 would realize that Tony Hernandez was involved in the cocaine  
21 transaction. That's one of the statements.

22 Another, prior to Diaz Morales meeting Pineda in 2010,  
23 a co-conspirator told Diaz Morales that Pineda assisted other  
24 drug traffickers with protection and helped them transport  
25 drugs through Puerto Cortés, a poor city on the northern coast

01IJPINC

1 of Honduras. The co-conspirator advised Diaz Morales that  
2 anything could be fixed through Pineda.

3 Another statement in or about 2013 about Diaz Morales,  
4 Tony Hernandez, and others transporting about 2,000 kilos of  
5 cocaine across nine shipments. A co-conspirator told Diaz  
6 Morales that they didn't have to worry about cocaine being  
7 seized by law enforcement in Honduras because Pineda was  
8 providing information about police checkpoints along the route  
9 so those checkpoints could be avoided.

10 And in or about 2013, two Honduran national police  
11 officers who were Bonilla's nephews told Diaz Morales that  
12 Pineda was involved in cocaine trafficking. Bonilla's nephews  
13 requested access to a truck with fake bottoms that Diaz Morales  
14 used to transport cocaine and Diaz Morales, that Pineda would  
15 be overseeing their transport.

16 So I'm going to admit these under 801(d)(2)(E). And  
17 I'm reserving on whether they would also be admissible under  
18 804(b)(3).

19 There are 14 statements made by co-conspirators to  
20 Alex Ardon, and CW-1, and I need not recount these 14  
21 statements. They're set forth in the motion papers. I agree  
22 that statements 3, 5, 6, 7, 9, 10, 11 are admissible under  
23 801(d)(2)(A), which provides that a statement is not hearsay if  
24 it is offered against an opposing party and was made by the  
25 party in an individual or representative capacity.

01IJPINC

1           Each is offered against Juan Orlando Hernandez as  
2 evidence of his participation in the charged conspiracy. 3, 5,  
3 6, 7, 9, 10, and 11 were made by Juan Orlando Hernandez in his  
4 individual capacity. Statement 13 was made by Tony Hernandez  
5 and is not admissible under this rule, but the statements are  
6 admissible under 801(d)(2)(E) that Juan Orlando, Bonilla, Tony  
7 Hernandez, Alex Ardon, CW-1, and El Chapo were all members of  
8 the charged conspiracy and that each statement was made in  
9 furtherance of the conspiracy. And I agree and conclude that  
10 each statement is admissible under 801(d)(2)(E).

11           Video recordings made by Leonel Rivera containing  
12 statements by co-conspirators, and the government seeks to  
13 introduce recordings of a February 2014 and March 2014 meeting  
14 between Leonel Rivera, another Honduran official, and drug  
15 traffickers. And they are admissible both as statements by a  
16 co-conspirator during and in furtherance of the conspiracy, as  
17 well as statements against penal interest. Statements made by  
18 co-conspirators to Leonel Rivera, there are two statements made  
19 to Leonel Rivera by CC-3, a Honduran drug trafficker who  
20 maintained a clandestine airstrip in Honduras, and by Avila  
21 Meza, a corrupt official in the Honduran National Police.

22           The government argues that the following two  
23 statements are admissible co-conspirator statements under  
24 801(d)(2)(E) and statements against penal interests. And I  
25 don't need to get into the full of them, but in or about late



01IJPINC

1 2012 or early 2013, CC-3 told Leonel Rivera that approximately  
2 a week prior, CC-3 had received a shipment of 800 to 850 kilos  
3 of cocaine to be delivered to a clandestine airstrip that CC-3  
4 maintained. CC-3 previously had agreed to provide the drugs to  
5 Mexican narcotics traffickers who in turn would pay CC-3  
6 approximately 25 percent of the value.

7 CC-3 told Leonel Rivera that when the plane landed,  
8 the Mexican buyers arrived, accompanied by Bonilla, along with  
9 two police patrol cars and armed officers in full police  
10 uniform. CC-3 told Leonel Rivera that the Mexican buyers with  
11 Bonilla standing next to them paid CC-3 in cash, then loaded  
12 the drugs into two police cars which CC-3 said then left with  
13 their sirens on. CC-3 expressed to Leonel Rivera that CC-3 was  
14 surprised Bonilla had been present for this transaction, given  
15 his position.

16 Also, in early 2013 Avila Meza told Leonel Rivera that  
17 Bonilla was providing protection for the drug trafficking  
18 activities of Morales. So these were statements by  
19 conspirators in furtherance of the conspiracy. CC-3 and Avila  
20 Meza were both conspirators in the charged conspiracy. CC-3  
21 operated an airstrip. And it's statement during and in  
22 furtherance of the conspiracy. The first statement would also  
23 come in as a statement against penal interest.

24 Government also seeks to offer statements Fuentes  
25 Ramirez made to Leonel Rivera in September 2020 at the MCC, and

01IJPINC

1 these are statements the government seeks to offer under  
2 804(b)(3). Now, the first statement is in or about  
3 September 2020, Fuentes told Leonel Rivera that Fuentes  
4 believed he was in prison because of Juan Orlando, that prior  
5 to his arrest Fuentes Ramirez and Commissioner Martinez had met  
6 with a military official who said he was sent by Juan Orlando  
7 who told them to sell one of Fuentes Ramirez's companies to  
8 Juan Orlando so that Juan Orlando could use it to launder,  
9 among other things, millions of dollars of drug proceeds.

10 I'm reserving decision on whether this is admissible  
11 as a statement against penal interest. I need to hear the  
12 testimony in context before ruling on that.

13 The second statement is Fuentes Ramirez told Leonel  
14 Rivera that Fuentes Ramirez met with Juan Orlando on two  
15 occasions when Juan Orlando was running for reelection, paid  
16 Juan Orlando approximately 450,000 lempiras both times and, in  
17 exchange, received Juan Orlando's assurance that Juan Orlando  
18 would support Fuentes Ramirez with anything Fuentes Ramirez  
19 needed. That's a statement against penal interest.

20 There are a series of statements that the government  
21 cites made by Tony Hernandez to Diaz Morales, and I reviewed  
22 the statements. There are four in particular that I see in the  
23 government's motion papers, and I conclude that these are  
24 statements that are admissible as made during and in  
25 furtherance of the conspiracy. Tony Hernandez and Diaz Morales

01IJPINC

1 were co-conspirators. Each of the four statements was in  
2 furtherance of the conspiracy.

3 In the first statement, Tony Hernandez tells Diaz  
4 Morales that if he bribes the national party campaign, he'll  
5 obtain greater access to information from the Honduran National  
6 Police and army, which will prevent his cocaine from being  
7 seized. In the second statement, Tony Hernandez describes  
8 Bonilla's role in the conspiracy, showing that Bonilla could  
9 protect the conspiracy's activities.

10 In the third statement, Tony Hernandez explains the  
11 status of the extradition law and how it could be delayed,  
12 which would allow the conspiracy to continue to operate. In  
13 the fourth statement, Tony Hernandez told Diaz Morales that if  
14 Juan Orlando were elected president, there would be no issues  
15 with trafficking cocaine through Honduras. This statement  
16 evidences that Juan Orlando would protect the conspiracy's  
17 operations.

18 So I need not decide whether they're also admissible  
19 as statements against penal interest, although they likely are.

20 Government seeks to admit statements made by CC-1 to  
21 CW-2. The statements explain that in 2013, before the Honduran  
22 presidential election, CC-1, a high-ranking member in the  
23 Sinaloa Cartel, paid two \$500,000 bribes to CC-2 to support  
24 Juan Orlando's presidential campaign. CW-2 provided 300,000 to  
25 another individual who later told CC-1 the money was a final

01IJPINC

1 push for Juan Orlando's campaign.

2           The government argues that the following statements  
3 are admissible, and these are the ones cited, that in or about  
4 2013, CC-2 told CC-1 that the candidate needed some  
5 collaboration. Thereafter, CC-1 told CW-2 that he gave 500,000  
6 to CC-2. In or about 2013, prior to the Honduran presidential  
7 election, CC-1 told CW-2 that CC-1 delivered another 500,000 to  
8 CC-2. In or about 2013, approximately the day prior to the  
9 Honduran presidential election, CW-2 gave approximately 300,000  
10 to an individual who later told CC-1 that the money was to be  
11 used as a last push for the president and vice president  
12 elections.

13           So these satisfy the requirements under 801(d)(2)(E)  
14 as co-conspirator statements made during and in furtherance of  
15 the conspiracy, and they will be admitted.

16           There are also statements made to Chang Monroy. In  
17 approximately 2009, Tony Hernandez told Chang Monroy that he  
18 had approximately 2 tons of cocaine in Honduras at the time and  
19 that he also had access to a cocaine laboratory in Colombia  
20 where he could mark kilograms with unique stamps to identify  
21 his drugs, including, but not limited to, a "TH" stamp. Tony  
22 Hernandez said that he had strong relationships with Honduran  
23 politicians as well as the military and police, particularly in  
24 the Copan department. Tony Hernandez also offered Chang Monroy  
25 weapons, including grenade launchers, machine guns, and an FN

01IJPINC

1 Herstal 57 pistol that he referred to in Spanish as a "cop  
2 killer."

3 Secondly, on several occasions between approximately  
4 2009 and 2010, Santos Tobar told Chang Monroy that the cocaine  
5 they were working to distribute and import was supplied by Tony  
6 Hernandez and Vergara Bonifante. These satisfy the  
7 requirements under 801(d)(2)(E) and will be admitted, and I do  
8 reserve on whether they're also admissible under 804(b)(3).

9 Statements made by Honduran officials, including Juan  
10 Orlando and Fuentes Ramirez, to Jose Sanchez, this is at ECF  
11 554 pages 63 to 68. There are three statements that the  
12 government seeks to admit, and certainly the first and the  
13 third statement are admissible as statements of a  
14 co-conspirator by and during and in furtherance of the  
15 conspiracy and admissible under 801(d)(2)(E). The first  
16 statement and Fuentes Ramirez's portion of statement three are  
17 admissible pursuant to 804(b)(3), and statement two is  
18 admissible as an admission of a party opponent under  
19 801(d)(2)(A).

20 In the first statement, Barahona promises Fuentes  
21 Ramirez he will intervene with law enforcement to protect  
22 Fuentes Ramirez from being investigated or arrested for  
23 operating a cocaine laboratory. In the third statement, Juan  
24 Orlando promises to protect Fuentes Ramirez from arrest and  
25 extradition and directs him to transport cocaine with the

01IJPINC

1 assistance of Honduras military. One and three are the  
2 statements that are admissible under 801(d)(2)(E).

3 The second statement, Juan Orlando describes  
4 embezzling U.S. aid and stealing from Honduras Social Security  
5 Fund. These are arguably in furtherance of the conspiracy  
6 because they are, in effect, a brag of the steps to which Juan  
7 Orlando is prepared to go. But I think more naturally, they  
8 are admitted under 801(d)(2)(A) as a statement against penal  
9 interest, and I admit the statement two under 801(d)(2)(A).

10 There are statements by co-conspirators to CW-3, five  
11 in all, and I refer you to pages 5 through 10 of ECF 663, and  
12 they are admissible under 801(d)(2)(E). The government first  
13 asserts that the conversation occurred between CW-3 and his  
14 drug trafficking co-conspirators, and that's as to the first  
15 conversation. They also contend that the conversations were  
16 about their ongoing drug trafficking activity and, thus, in  
17 furtherance of the drug trafficking conspiracy.

18 With respect to the first statement, the conversation  
19 involved the conspirators' efforts to solve the problem of an  
20 airplane that had been seized because it was carrying cocaine  
21 that belonged to Juan Orlando Hernandez and Tony Hernandez as  
22 well as other drug traffickers.

23 The second statement involved Leonel Rivera telling  
24 his co-conspirators that the Cachiros sold cocaine to the  
25 Valles, that Tony Hernandez worked with the Valles and that

01IJPINC

1 Juan Orlando supported Tony Hernandez's drug trafficking in the  
2 background. The statement involved identifying the  
3 participants in the conspiracy, thus, furthering the  
4 conspiracy.

5 In the third statement a high-ranking member of the  
6 Sinaloa Cartel told CW-3 that he would support Juan Orlando's  
7 presidential campaign, furthering the conspiracy by evidencing  
8 the Sinaloa Cartel's support for Juan Orlando's activities.  
9 The fourth statement involves a conversation about a bribe from  
10 the Valles' drug trafficking organization to Juan Orlando's  
11 campaign. The fifth statement involves CW-3's conversations  
12 about obtaining radar information to facilitate his drug  
13 trafficking with the Cachiros.

14 Government seeks to offer statements by Miguel Valle  
15 to CW-2. This is ECF 663 at 11 through 13. Miguel Valle told  
16 CW-2 that he had sent two King Air planes loaded with CW-2's  
17 cocaine to CC-7's airstrips in Honduras. Valle further stated  
18 that CC-7 transported those loads by land to a ranch Valle  
19 owned in Honduras, and Honduran national police officers  
20 including Bonilla had provided protection.

21 I find that that satisfies the conditions under  
22 801(d)(2)(E). CW-2 and Miguel Valle were both part of the same  
23 narcotics trafficking conspiracy as the defendants. CW-2  
24 worked for CC-1 as a conduit between the Sinaloa Cartel and the  
25 Honduran drug traffickers, and Miguel Valle trafficked drugs in

01IJPINC

1 Honduras as part of the charged conspiracy. They were made by  
2 Valle to assure CW-2 that the cocaine in the shipment would be  
3 protected.

4 Now, there are statements that the government seeks to  
5 offer by Carlos Alberto Vallardes Zuniga to Leonel Rivera. And  
6 Carlos Vallardes was a Honduran national police officer who  
7 participated in the Cachiros drug trafficking organization led  
8 by Leonel Rivera. Leonel Rivera facilitated a drug shipment of  
9 375 kilograms of cocaine from Venezuela to Honduras that was  
10 eventually delivered to the Valles for two and a half million  
11 U.S. The money was seized by Honduran national police  
12 officers, and Leonel Rivera had his associates pay a portion of  
13 the money to Bonilla for its release.

14 The government seeks to introduce Leonel Rivera's  
15 testimony about his conversation with Carlos Vallardes about  
16 the bribe to Bonilla under rule 801(d)(2)(E). Specifically,  
17 Leonel Rivera will testify that one of his coworkers – and this  
18 is CC-9, I gather, not CC-8, correct?

19 MS. TARLOW: Yes, your Honor.

20 THE COURT: Placed the two and a half million in the  
21 SUV, and CC-9 later recalled Leonel Rivera telling him that the  
22 SUV's driver told CC-9 that Honduran national police officers  
23 had stopped the SUV at gunpoint at Bonilla's direction. Leonel  
24 Rivera called Carlos Vallardes, and Carlos Vallardes told  
25 Leonel Rivera that he could bribe Bonilla or try to swap the



01IJPINC

1 SUV at the police station with a similar vehicle. Leonel  
2 Rivera told Vallardes he would bribe Bonilla, and Vallardes  
3 told Rivera that Bonilla had conveyed that he wanted 500,000.

4 These qualify as co-conspirator statements made during  
5 and in furtherance of the conspiracy.

6 Government seeks to offer statements made by  
7 co-conspirators to CW-4. This is 663 at 17-19. And  
8 specifically, the government identifies four such statements,  
9 and I conclude that they're admissible as co-conspirator  
10 statements.

11 Statement one involved the co-conspirators discussing  
12 the logistics of receiving loads of cocaine from the  
13 Hernandezes. Statement two involved Cholo Ivan, El Chapo's  
14 security guard, introducing Tony Hernandez to CW-4, identifying  
15 the members in the conspiracy. Statement three involved a  
16 statement CW-4 overheard about where El Chapo was staying for  
17 further drug negotiations. This is a logistical conversation  
18 necessary for the conspiracy to function, or at least useful  
19 for the conspiracy to function. And statement four involved El  
20 Chapo's son, Ivan, instructing CW-4 to bribe an official in the  
21 Honduran security forces to ensure safe protection for members  
22 of the Sinaloa Cartel through Honduras.

23 I neglected to address a statement that was in the  
24 government's supplemental motion made by Miguel Valle, one of  
25 the leaders of the Valle organization, and I conclude that it's

01IJPINC

1 a co-conspirator statement admissible under 801(d)(2)(E).  
2 Valle told Chang Monroy that the Valles paid Bonilla roughly  
3 every three months to protect their narcotics loads and  
4 directly paid Bonilla or two lower-ranked officers in the  
5 Honduran National Police.

6 Government asserts that the evidence will establish  
7 that the Valles were co-conspirators and that the statements  
8 were in furtherance of the conspiracy, as Miguel Valle  
9 explained to Chang Monroy how Bonilla protected their shipments  
10 and how he was compensated for that.

11 So returning to ECF 554 at 68-72, evidence of  
12 Bonilla's participation in drug-related murder, the government  
13 seeks to admit the testimony of Alex Ardon that Bonilla  
14 murdered Victim-1 in 2011 at Tony Hernandez's direction. The  
15 government alleges that Victim-1 refused to allow Ardon to use  
16 certain land to ship their cocaine. Ardon told Tony Hernandez  
17 about this, and Tony Hernandez told Alex Ardon that he would  
18 direct Bonilla to murder Victim-1. Later, Tony Hernandez told  
19 Alex Ardon that Bonilla had murdered Victim-1 and was able to  
20 do so because of his access to armed security and armored  
21 vehicles.

22 They are admissible as co-conspirator statements. I  
23 need not reach the statements against penal interest point,  
24 although probably admissible under that. Alex Ardon and Tony  
25 Hernandez were conspirators in the charged conspiracy. The

01IJPINC

1 conversation about them murdering Victim-1 was in furtherance  
2 of the conspiracy because Victim-1 refused to allow Ardon to  
3 use his land, hindering the conspiracy's operation. Evidence  
4 that Bonilla murdered Victim-1 at Tony Hernandez's direction  
5 using armed security and armored vehicles is direct evidence of  
6 Bonilla's role in the conspiracy, as the government alleges  
7 that Bonilla protected the conspiracy's operation and  
8 shipments.

9 And I do not conclude that it's excludable under 403  
10 because it's evidence of the operations of the conspiracy, and  
11 it bears on the nature, structure, roles in the conspiracy.

12 Next, the government seeks to admit evidence of drug  
13 ledgers seized from Nery Lopez Sanabria, and this is ECF 554 at  
14 72-74, and these are drug ledgers seized by Honduran police  
15 from a car in which Nery Lopez Sanabria, a drug trafficker, was  
16 a passenger. The government urges that the contents of the  
17 drug ledgers are admissible co-conspirator statements, and the  
18 Court agrees. The ledgers contain the initials of Juan Orlando  
19 Hernandez and Tony Hernandez for various large cocaine  
20 transactions and payments reflecting payments to the two of  
21 them and a particular 650-kilogram drug load using a Nava  
22 plane.

23 The government urges that a jury could infer that the  
24 ledger belonged to Sanabria, a member of the conspiracy,  
25 because the ledgers were found in the car where he also carried

01IJPINC

1 firearms and drug proceeds. While the government has not  
2 specifically identified the author of the ledger entries, the  
3 government need only show that the author is a member of the  
4 conspiracy. The person filling out a ledger entry of this sort  
5 would have been a member of the conspiracy, and maintaining the  
6 ledger constituted a communication during and in furtherance of  
7 the conspiracy. And I rely in part on *United States v. Ashraf*,  
8 F. App'x 26, where the circuit held that the admission of a  
9 drug ledger was not error, much less plain error.

10 Next, government seeks to admit electronic  
11 communications by Central American drug traffickers regarding  
12 cocaine bearing the "TH" stamp. This is ECF-554 at 74-80,  
13 Exhibit E, and ECF 487 at 28-34, Exhibit B. I conclude that  
14 the messages are statements against penal interest, satisfying  
15 the requirements of Rule 804(b)(3).

16 The government has made a good-faith effort to produce  
17 CC-5 and CC-6. It has not been able to identify one of the  
18 participants in the message. The government has identified the  
19 other participant and has attempted to extradite him, but has  
20 not been able to find him in Central America. Accordingly,  
21 CC-5 and CC-6 are unavailable for the purposes of Rule  
22 804(b)(3).

23 Further, their messages expose them to criminal  
24 liability because they discuss past and future plans to deal  
25 cocaine, along with sending images of large amounts of cocaine.

01IJPINC

1 The messages bear the requisite indicia of reliability because  
2 CC-5 and CC-6 were speaking to co-conspirators in the  
3 conspiracy with no knowledge their message was being  
4 intercepted. They accordingly had no incentive to be dishonest  
5 in their communications. And I reserve on whether or not  
6 they're also admissible under 801(d)(2)(E).

7 Next, electronic evidence from Tony Hernandez's cell  
8 phones, that include photographs of machine guns, this is ECF  
9 554 at 80-84, ECF 487 at 34-39. Government seeks to introduce  
10 evidence from Tony Hernandez's phone that includes photographs  
11 of machine guns including one inscribed with Juan Orlando's  
12 name, photographs of U.S. currency that testimony will  
13 establish is from drug proceeds, and contact information for  
14 and photographs of co-conspirators. The government urges that  
15 the photographs from Tony Hernandez's phone are direct evidence  
16 of the charged offenses whose probative value outweighs any  
17 danger of unfair prejudice. The defendants seek to exclude it  
18 under Rule 403.

19 I'm going to admit the evidence. The defendants are  
20 charged with using machine guns in furtherance of their  
21 conspiracy to import cocaine into the United States and  
22 conspiring to use machine guns in furtherance of their  
23 conspiracy. Tony Hernandez was a key figure in the conspiracy,  
24 and the photographs on his phone of firearms is evidence that  
25 he possessed these types of firearms in the course of the

01IJPINC

1 conspiracy or at least that he possessed firearms.

2 Further, the photographs inscribed with Juan Orlando's  
3 name is evidence that Juan Orlando possessed or had cognizance  
4 of the use of the firearms in the course of the conspiracy.  
5 Bonilla and Pineda contend the photographs are cumulative  
6 evidence because the evidence contained in the photographs  
7 could also be elicited through witness testimony. The  
8 photographs, however, corroborate the witness testimony.

9 Now, I reserve the right, depending on what's being  
10 offered, to limit the introduction of cumulative evidence. I  
11 don't know how many photographs the government is seeking to  
12 offer, but I will exercise my authority to exclude cumulative  
13 evidence.

14 Government seeks to offer spreadsheets from CW-1's  
15 laptop cataloging political bribes. This is ECF 554 at 84-87.  
16 Now, this would include contact information for Juan Orlando  
17 and numerous of his co-conspirators including Tony Hernandez  
18 and Pepe Lobo, Excel spreadsheets detailing Juan Orlando's use  
19 of drug proceeds to commit voter fraud.

20 For example, CW-1 maintained spreadsheets recording  
21 bribes he and others paid to representatives at polling sites  
22 to manipulate votes in Juan Orlando's favor, which were  
23 referred to as payments for trainings. Also bribes made to  
24 mayors, including each mayor's bank account information, to  
25 ensure they garnered support for Juan Orlando, and three bribes

01IJPINC

1 paid to municipalities in Copan where Juan Orlando lacked the  
2 votes necessary to legitimately win the election. Also, there  
3 are numerous pictures of CW-1 with other politicians and  
4 co-conspirators, including a picture of CW-1 with Juan Orlando.

5 The government argues that this evidence is admissible  
6 as direct evidence against the defendants, and the Court  
7 agrees. The Excel spreadsheets document the usage of drug  
8 proceeds to pay bribes to maintain political power and is  
9 direct evidence that Juan Orlando conspired with traffickers to  
10 maintain political power in Honduras and provide protection for  
11 drug shipments in return. The maintenance of political power  
12 was a necessary requirement to further the interests of the  
13 conspiracy.

14 The government next seeks to offer evidence from  
15 Fuentes Ramirez's cell phone that includes photographs of  
16 firearms and cash, as well as Waze data. This is 554 at 87-92.  
17 This includes contacts and electronic communications between  
18 Fuentes Ramirez and members of the Honduran National Police and  
19 Honduran military, data from the navigation application, Waze,  
20 showing that Fuentes Ramirez traveled to the presidential  
21 palace on May 29 and June 12, 2019, photographs of firearms and  
22 both currency.

23 So the communications between Fuentes Ramirez and the  
24 members of the Honduran National Police and the Honduran  
25 military are co-conspirator statements admissible under

01IJPINC

1 801(d)(2)(E). The Waze application is direct evidence of the  
2 conspiracy, as is the photographs from Fuentes Ramirez's phone.  
3 And I reserve the right to exclude any photographs that I  
4 conclude are cumulative.

5 Evidence from Gutierrez's iCloud and Instagram  
6 accounts, ECF 554 at 92-94, these are photographs of Gutierrez  
7 with Juan Orlando and photographs of Martinez, who's a member  
8 of the Honduran National Police, with Juan Orlando and  
9 photographs of firearms and large amounts of U.S. currency and  
10 Gutierrez's electronic communications. The photographs are  
11 direct evidence of the charged offenses, are probative of the  
12 fact that Juan Orlando had a relationship with Daniel Gutierrez  
13 and Martinez.

14 The photographs of the firearms found on Gutierrez's  
15 phone are admissible as direct evidence and pass muster under  
16 403. There are multiple images of an olive-colored AR-15 rifle  
17 with a Navy insignia, and Jose Sanchez testified that Fuentes  
18 Ramirez received a similar firearm from the Honduran military  
19 after his meetings with Juan Orlando. Again, I reserve the  
20 right to restrict cumulative evidence, but I'll reserve on that  
21 for trial.

22 There's an electronic communication between Gutierrez  
23 and Krizia Murillo dated July 11, 2021. In that exchange the  
24 two identify a number of co-conspirators the government had  
25 identified in one of its *in limine* filings. The government



01IJPINC

1 notes that the Court also admitted this exchange in the Fuentes  
2 Ramirez trial. I will admit it under 804(b)(3). It exposes  
3 the two individuals to criminal liability because specifically  
4 identifying the co-conspirators Gutierrez and Krizia Murillo  
5 are stating that they are involved in the conspiracy. The  
6 messages also bear the requisite indicia of reliability because  
7 the conversation was between two allies in the conspiracy who  
8 had no incentive to lie during the exchange.

9 Now, there's also a motion to sever. Anyone want to  
10 be heard on the motion to sever beyond what's in their  
11 submissions?

12 All right. Juan Orlando has moved for an order  
13 directing an election of separate trials and/or counts or, in  
14 the alternative, granting a severance of defendants based on  
15 the pervasive and unavoidable prejudice that will result by  
16 joinder of defendants and counts. He asserts that he would  
17 suffer prejudice from a joint trial, that it would outweigh the  
18 benefits to judicial economy from a single trial.

19 He does not identify what would be prejudicial to and  
20 from a joint trial with Bonilla Vallardes and Pineda. He  
21 acknowledges that the Court will admit evidence in the joint  
22 trial that is admissible only against Bonilla Vallardes and  
23 Pineda, but does not state what that evidence is.

24 Similarly, Bonilla has moved to sever his trial from  
25 the trial of Juan Orlando and Pineda. He argues that he would

01IJPINC

1 be subject to prejudicial spillover of evidence because most of  
2 the evidence in the case involves Juan Orlando Hernandez and  
3 his rise to power. He also contends that there may be  
4 irreconcilable defense conflicts based on defenses that he was  
5 investigating.

6 Even without a consolidated trial indictment, the  
7 Court may order the separate cases be tried together as though  
8 brought in a single indictment or information if all offenses  
9 and all defendants could have been joined in a single  
10 indictment or information. This comes from Rule 13 of the  
11 Federal Rules of Criminal Procedure.

12 Under Rule 8(b), two or more defendants may be charged  
13 in the same indictment if they're alleged to have participated  
14 in the same act or transaction or in the same series of acts or  
15 transactions constituting an offense or offenses. The Second  
16 Circuit reads the language of Rule 8(b) to mean that the  
17 joinder of defendants is proper when the alleged acts are  
18 unified by some substantial identity of facts or participants  
19 or arise out of a common plan or scheme. That's *United States*  
20 *v. Feyrer*, 333 F.3d (2003).

21 Juan Orlando, Bonilla, and Pineda are alleged to have  
22 participated in the common plan or scheme, the conspiracy to  
23 import large amounts of cocaine from Honduras to the United  
24 States, and three defendants worked together in the conspiracy.  
25 Juan Orlando relied on Bonilla and Pineda to use their senior

01IJPINC

1 positions in the Honduran National Police to protect drug  
2 shipments that financed his political campaign. The government  
3 expects to offer testimony from several cooperating witnesses  
4 describing the role of each defendant in the conspiracy and how  
5 the defendants worked together in the conspiracy.

6 So the motion to sever is denied.

7 MR. COLON: Judge, I'm sorry. May we approach, sir,  
8 for a second?

9 THE COURT: Well, on the record or what?

10 MR. COLON: Off of the record for a second.

11 THE COURT: No.

12 MR. COLON: I'll say it on the record.

13 As you know, Judge, I filed an application for an  
14 adjournment, provided some medical documentation. I filed that  
15 motion with respect to the severance, so I just wanted to know  
16 that, depending on what your decision is, may have a bearing on  
17 what you're saying now, sir.

18 THE COURT: Well, I received from you a motion to  
19 continue the trial, and you filed that motion on January 10.  
20 And on January 11, I ruled on that motion.

21 MR. COLON: As a result of that, Judge, I took the  
22 opportunity -- I think you allowed for a submission of  
23 additional medical information.

24 THE COURT: I made no such ruling.

25 MR. COLON: I thought you did, Judge.

01IJPINC

1 THE COURT: I have a copy of my order right here. I  
2 have received your submission.

3 MR. COLON: And I submitted something last night, as  
4 well.

5 THE COURT: Yes. It was 57 pages in length, yes.

6 MR. COLON: And I was requesting --

7 THE COURT: I ruled on the motion. I received your  
8 submission, yes, after I ruled on the motion. Go ahead.

9 MR. COLON: My understanding is that my client is  
10 wishing to request a change of counsel, your Honor.

11 THE COURT: Did you read my order of January 11?

12 MR. COLON: I did, sir.

13 THE COURT: Did I address that in there?

14 MR. COLON: I don't believe you, Judge.

15 THE COURT: I believe I did.

16 MR. COLON: But this request has been made by my  
17 client just today with respect for a request for a public  
18 defender or CJA representation, your Honor.

19 THE COURT: Well, you submitted it to me on  
20 January 10.

21 MR. COLON: That's correct, your Honor.

22 But given what I saw in terms of my physician's  
23 letters and the documentation, I think at this point I don't  
24 think I can be ready in 30 to 45 days. I don't know if it will  
25 be six, seven, or eight months that I'll be at least declared

01IJPINC

1 able to try this case.

2 THE COURT: You made a motion.

3 MR. COLON: Yes, sir.

4 THE COURT: I ruled on the motion, and your motion  
5 included your client's request.

6 MR. COLON: Yes.

7 THE COURT: I ruled on that in a written order that  
8 was filed on ECF at 660. I have the materials you transmitted,  
9 and if you would like, you want me to treat that as a motion to  
10 reconsider?

11 MR. COLON: Yes, sir.

12 THE COURT: I'll do that and I'll rule on it.

13 MR. COLON: Thank you.

14 THE COURT: All right.

15 Is there anything further from the government with  
16 regard to *in limine* motions?

17 MR. COLON: Your Honor, I think my client has an  
18 additional element to this, and that's with respect to the  
19 breaking down of communications and possible ineffectiveness of  
20 having a single attorney representing him, as opposed to a more  
21 expanded team, Judge. So I say that because I'm concerned  
22 about his ability to receive a fair trial.

23 THE COURT: Are you making your client's claim that  
24 you're an ineffective lawyer?

25 MR. COLON: I'll let my client address the Court on

01IJPINC

1 that, Judge, if you permit him.

2 But I think that the fact that we didn't have an  
3 additional -- well, several additional members to the team  
4 because of the lack of resources, that's giving my client some  
5 difficulty and having what he believes is an ineffective  
6 representation in terms of the manpower that we had at our  
7 disposal. I'm just letting you know, Judge. This is what I  
8 was communicated by Mr. Hernandez this morning.

9 THE COURT: This morning he said this to you?

10 MR. COLON: That's correct, sir.

11 THE COURT: All right. Mr. Hernandez, is there  
12 something you want to say?

13 DEFENDANT HERNANDEZ: Yes, your Honor.

14 I would like to ask your Honor to hear me out, please.  
15 I have two crucial emergencies in my life. One has to do with  
16 the fact that I do not feel duly represented. I am without a  
17 defense, and I would like to explain that to you outside of the  
18 presence of the prosecutors, if you will so allow.

19 THE COURT: I will not. Go ahead.

20 DEFENDANT HERNANDEZ: May I explain, judge?

21 THE COURT: You may. You're welcome to.

22 DEFENDANT HERNANDEZ: Thank you.

23 I do not have effective representation. I cannot  
24 reconcile with my attorney on certain points. At first, we  
25 worked very well together, but from six months ago until the

01IJPINC

1 present, he has been suffering from illness. We have almost  
2 not met as we would like to during the past six months. Today,  
3 you addressed the *in limine* motions from the prosecutor. We  
4 had devised to reply to them. And there was no reply from me,  
5 and we had arranged for that.

6 I have not been allowed to see my attorney from  
7 Honduras. This is a complex case. It's voluminous. But there  
8 are also false allegations of my status as ex-speaker of the  
9 congress in Honduras, as I was also the president of Honduras.  
10 So I need the presence of my Honduran attorney to help my  
11 attorney with my defense, and they were never allowed to visit  
12 me legally.

13 Judge, I have been requesting a laptop for one year,  
14 and my attorney has it and has not been allowed to pass it to  
15 me the way other defendants are allowed to have them in  
16 preparation for their trials. We had agreed with my attorney  
17 to present motions regarding stipulations, also witnesses from  
18 Honduras, to prepare subpoenas for witnesses here in the United  
19 States, and amounts of evidence, and none of that has been  
20 brought before you.

21 But besides that, something very concerning, very  
22 serious to me, it's that the person who sought my attorney so  
23 that my family could hire them some days ago, he expressed in  
24 the media that the DEA had enlisted him to infiltrate my  
25 defense, and that is not a fair trial, Judge. That's something

01IJPINC

1 perverse. And I don't think that the justice system in this  
2 country operates that way, as I expect that you wouldn't want  
3 it to.

4 But also, Judge, that same person last week started a  
5 campaign against my fundraising campaign for my defense,  
6 because I have had no money to pay for it. My daughters  
7 started a campaign on a website through a platform, and this  
8 person who said they infiltrated my defense, they intervened,  
9 and the fundraising stopped yesterday. I don't have money,  
10 Judge. That's why days ago I had petitioned you to assign me a  
11 public attorney, and that's what I'm doing today. It's clear  
12 that my defense is inadequate and insufficient, and it's clear  
13 that I cannot continue with this trial in this way without  
14 having a defense.

15 And aside, on top of my attorney's illness – I have to  
16 say it here, I'm sorry – his mother is also very ill and relies  
17 on him, so I cannot see him. And Judge, we were just issued an  
18 enormous volume of material. It was delivered to us late like  
19 the material before the last time, also late, and it is  
20 physically impossible to see it.

21 And the other important factor that I would like you  
22 to know, Judge, that wasn't relayed to you by my attorney, as  
23 we had agreed he would, is that among the materials we received  
24 from the U.S. Attorney's Office, there was sensitive  
25 information pertaining to a death threat against my family, but



01IJPINC

1 I was only able to see it about 20 days ago. It was in the  
2 hands of the prosecutors over a year ago, and the threats in  
3 Honduras have continued.

4 And unfortunately, Judge, among that same information,  
5 the criminal organization that were putting together these  
6 attempts against my family, according to the source of  
7 information for the U.S. agency that received this information,  
8 this criminal group has already killed someone, the son of a  
9 former president.

10 Judge, every day I go through a terrible situation  
11 because I don't know what's going to happen to my family. It  
12 was the FBI who gave that information, and they come to tell me  
13 only as I'm finding the document because I was looking for the  
14 material. Is it that my family's life doesn't matter to the  
15 prosecutors? That's why I wanted you to know that, and you  
16 were never informed of that.

17 I apologize, Judge, but I'm left with no other choice  
18 than to ask you to appoint me a new attorney. I thought that  
19 we would be able to do it with the few resources we had in  
20 order to pay my Attorney Colon what he is due, but we have been  
21 unable. So thank you for your attention, Judge, and please  
22 appoint me a new public defender because the United States  
23 brought me from my country to try me here, and there are rules  
24 here that guarantee that essential defense for me.

25 Before the United States was constituted, the colonies

01IJPINC

1 that were here suffered a lot because of England. They took  
2 away people to England to be tried there. There was no way of  
3 bringing witnesses over there, and they were tried by people  
4 who did not even know them. And that is why they were called  
5 tyrants. I know that your founding fathers tried to amend that  
6 so that it not happen to anybody, not just me, but not anybody.  
7 So, Judge, I put my trust in your judgment. Thank you.

8 THE COURT: Thank you very much.

9 MR. COLON: Judge, if I may, sir?

10 THE COURT: Yes.

11 MR. COLON: I'm not fit to try this case with the  
12 timeframe. And I agree with my client that we were really  
13 short of resources, but the confidence has broken down in terms  
14 of what I could supply to him. And so I think, quite frankly,  
15 it's very hard to follow that exposition from him, but, Judge,  
16 I believe I'm not fit physically to try it. I was at one time  
17 very fit to do that, and I think my client and I will never be  
18 able to reconcile that, and I can't physically.

19 And I think that the information that I sent you from  
20 Dr. Kirsh, who especially has known me for many years, knows  
21 that I've deteriorated. And it's interesting that my client  
22 pointed that out earlier when we were talking. Sometimes you  
23 don't really see yourself in the mirror as others see you. And  
24 I support him in his petition, Judge, even though it might be  
25 to some jeopardy to me. But I physically have not been able to

01IJPINC

1 see him as often as possible, and as the doctors noted, I'm  
2 facing two maladies, both that are current, and just  
3 deteriorating, quite frankly, Judge.

4 THE COURT: Thank you very much, Mr. Colon.

5 There have been a number of accusations made by  
6 Mr. Hernandez, number one, that there was a late production of  
7 a large volume of materials; that there were death threats  
8 against his family that were known to the government but no  
9 action was taken by the government with regard to the death  
10 threats; and, thirdly, I heard him state that he has reason to  
11 believe that the U.S. Drug Enforcement Administration caused an  
12 infiltration of his defense team.

13 Does the government have a response to that?

14 MS. TARLOW: Yes, your Honor.

15 First, starting with respect to the defendant's  
16 allegation that the government has provided late information,  
17 that is not the case. The government has been providing 3500  
18 materials. Perhaps that is what the defendant is referring to.  
19 We've been providing those 3500 materials since the first  
20 discovery production in this case, which was the prior trial  
21 testimony of certain witnesses, since February 14 of last year.

22 We have continued to provide 3500 materials pursuant  
23 to the Court's order. We are continuing to produce those 3500  
24 materials because we continue to meet with witnesses, create  
25 new 3500 materials in the course of doing so. And we are

01IJPINC

1 reviewing our files and will continue to provide 3500 up until  
2 the start of trial, but we have complied with your Honor's  
3 order regarding producing 3500 materials to date.

4 Yes, your Honor?

5 THE COURT: All right. Is there anything you want to  
6 add on 3500 material, Mr. Colon?

7 MR. COLON: Yes, your Honor.

8 Let me just address the issue of what Mr. Hernandez  
9 Alvarado just stated to the Court.

10 THE COURT: I'm talking about 3500 material, not about  
11 what Mr. Hernandez just stated to the Court.

12 MR. COLON: No, but he referred to the 3500 material.

13 THE COURT: He didn't refer to 3500 material actually.  
14 The government has noted that it has produced 3500 material and  
15 is continuing to do so on a rolling basis. And as you know as  
16 an experienced practitioner, 3500 material is often created  
17 right up until and sometimes during trial.

18 MR. COLON: But that threat against his family --

19 THE COURT: I'm not talking about the threat. We'll  
20 get to the threat. I'm talking about the 3500 material.

21 MR. COLON: That's when we first saw it just in  
22 December, Judge. And this information was available to the  
23 government back in December 2022 when an FBI agent filed a  
24 report about this.

25 THE COURT: I am trying to find out from you whether

01IJPINC

1 the government failed in its discovery obligations. Were they  
2 late in production? Do you have a claim on that basis?

3 MR. COLON: Yes, Judge. They were late at times on  
4 production, that's right. They were.

5 THE COURT: Well, I'm sure they were, but I just heard  
6 there was a recent production of material that should have been  
7 produced earlier. And the government has said that's not true,  
8 they've produced 3500 material on a rolling basis. You know  
9 that 18 U.S.C. Section 3500 ordinarily does not require the  
10 production of such material until after the witness  
11 testifies --

12 MR. COLON: I'm aware, sir.

13 THE COURT: -- on direct. Pursuant to Giglio, of  
14 course, it has to be produced in sufficient time to be usable  
15 at trial, and the government agreed to produce 3500 material on  
16 a rolling basis. So I'm going to get to death threats in a  
17 minute. I'm not up to that yet, sir.

18 So what do you want to tell me about late production  
19 by the government?

20 MR. COLON: That it has handicapped, hampered our  
21 ability to review this information.

22 THE COURT: No. No, sir. You have to be specific.  
23 There was something that they were supposed to have produced at  
24 this juncture but they failed to produce until that juncture.  
25 That's the question, sir. Tell me when. Tell me what.

01IJPINC

1 MR. COLON: The material that we're receiving now, we  
2 haven't been able to look at it or the material that was sent  
3 to us on December 7, at least, to Ms. Greenwood and that we  
4 received later on. We haven't been able to receive those or  
5 review all those 3500 materials in those discs.

6 THE COURT: I didn't ask whether you were able to  
7 review it. I asked when you received it.

8 MR. COLON: December 7 we were given a 3500 disc that  
9 apparently contained some sort of errors. We had to have that  
10 reviewed, and that was sent -- either a new disc was sent  
11 because one was blank. Another disc I was sent after that,  
12 after December 7, about maybe two weeks ago, had information or  
13 incorrect passwords that had to be corrected.

14 Now, that may be something that's mechanical in  
15 between the government and Ms. Greenwood, but that information  
16 we have yet to get to because of the volume, your Honor, and  
17 that's what caused this. It's caused a tremendous delay, if I  
18 may. That's what I'm saying judge. I don't have the dates  
19 with me specifically, but I believe there was an order -- a lot  
20 of this material is generally produced within 60 days of trial.  
21 We're getting it on a rolling basis.

22 But just that one issue that he referred to, that's  
23 something we should've gotten a long time ago, if it was back  
24 in December 2022 and we just got that just recently within the  
25 last 30 days.

01IJPINC

1 THE COURT: Does the government want to reply on 3500  
2 material?

3 MS. TARLOW: Your Honor, just as we previously stated,  
4 that we've been producing 3500 material consistent with your  
5 Honor's order.

6 I do also want to note that the government has made  
7 some limited discovery productions, as well, including most  
8 recently, we made a discovery production regarding certain  
9 ledgers that were in the possession of another district which  
10 the government just came into possession of. We also made a  
11 production of certain materials that have been provided in  
12 classified discovery, which the government has now provided in  
13 redacted form the unclassified portions of. That was the  
14 substantial portion of the most recent discovery productions.

15 THE COURT: All right. It's not my usual custom to  
16 set a date on production of 3500 material. I ask the  
17 government when they will be able to produce 3500 material, and  
18 then I hold the government to its pledge. I'm not in the  
19 business of coming up with a deadline different than the one  
20 that's set forth in the statute. You have a Giglio  
21 responsibility, you have a 3500 responsibility. What was the  
22 commitment that the government made with regard to 3500  
23 material? You keep referring to my order. I don't know if you  
24 can cite an order.

25 MS. TARLOW: I believe it was 60 days before the start

01IJPINC

1 of trial and the government could make an application for  
2 delayed disclosure of certain materials, which we did, which  
3 would need to be produced, I believe, at some point next week,  
4 January 20 or 22.

5 THE COURT: All right. So what have you produced  
6 later than 60 days?

7 MS. TARLOW: Additional materials as we meet with  
8 witnesses, those 3500 materials regarding our notes of those  
9 meetings.

10 THE COURT: So meetings that took place within the  
11 60-day period, not outside the 60-day period?

12 MS. TARLOW: As well as materials related to new  
13 witnesses that we have since decided to call, which may have  
14 predated the 60-day period.

15 THE COURT: All right. So I want you to send me a  
16 letter on the volume of the 3500 material that has been  
17 produced and what it is in fewer than 60 days.

18 MS. TARLOW: Yes, your Honor.

19 THE COURT: Now, with regard to the death threat, are  
20 you aware of the death threat?

21 MS. TARLOW: Your Honor, we would ask that counsel  
22 provide us with whatever the Bates number is in discovery for  
23 us to review the specific threat that they're referring to so  
24 that we can make sure we understand what that representation  
25 is.



01IJPINC

1 THE COURT: Mr. Colon, can you do that?

2 MR. COLON: I'll try to do it with my client, your  
3 Honor. As I said, he wishes to not have me represent him  
4 anymore, so I'm sort of in a quandary here. But I know exactly  
5 what we looked at about two weeks ago.

6 THE COURT: So you know about this purported death  
7 threat?

8 MR. COLON: Yes, I read it.

9 THE COURT: So all I'm asking you to do is communicate  
10 the Bates number today to Ms. Tarlow.

11 MR. COLON: Try to do that, sir, today.

12 THE COURT: I'm ordering you to do it.

13 MR. COLON: Yes, sir.

14 THE COURT: Okay. With regard to the DEA infiltration  
15 of the defense team, Ms. Tarlow?

16 MS. TARLOW: Your Honor, we would also ask that  
17 defense identify specifically what they are referring to with  
18 that respect, and we can respond in kind.

19 THE COURT: All right.

20 MR. COLON: I can respond, Judge.

21 THE COURT: Pardon me?

22 MR. COLON: I can respond, if you like.

23 THE COURT: Please.

24 MR. COLON: This infiltration involved a gentleman by  
25 the name – and I used the word "gentleman" very loosely – Jorge

01IJPINC

1 Levy, who portrayed him self as a rabbi who went down to  
2 Honduras, apparently well before my representation of  
3 Mr. Hernandez. And Mr. Levy was able to infuse himself in the  
4 family, discussing how he could get pardons for Mr. Tony  
5 Hernandez, discussing how -- you asked me about this, Judge, so  
6 I want to be as informative as possible.

7 That individual actually wrote a memo or at least had  
8 a report by the DEA in which he contributed his information  
9 after meeting with the family. And of course, quite frankly,  
10 defamatorily indicated that everybody in the family was  
11 involved in it. And he was a confidential informant at one  
12 time, but he did this on his own in order to seek a reward,  
13 right, a compensation, if he was able to flip Mr. Hernandez  
14 into pleading guilty.

15 I didn't know that at the time, but he eventually  
16 contacted me and he said he was referred by someone else. And  
17 we had many, many meetings over the last few months, and he  
18 portrayed himself as somebody who was willing to help Juan  
19 Orlando and was able to get pardons from the president at the  
20 time -- I think it was Donald Trump -- and also that he had all  
21 sorts of connections. And he actually engaged with us for a  
22 significant amount of time, possibly giving information to the  
23 DEA.

24 But yes, they penetrated the defense, the family first  
25 and the defense, by at least referring me and me not knowing

OIIJPINC

1 what his background was. He also was an individual with an  
2 extensive criminal history, which I didn't find out about until  
3 I received Rule 16 material about him. So yes, he did  
4 penetrate not only the family, but the defense, in that he  
5 didn't advise me of what his real intentions were.

6 Eventually --

7 THE COURT: Mr. Levy, listening to your recounting of  
8 it, sounds like an awful fellow.

9 MR. COLON: He is, sir.

10 THE COURT: But let's take that as a given. The  
11 question is what is your evidence that the DEA infiltrated the  
12 defense team?

13 MR. COLON: The DEA knew who he was. He was allowed  
14 to speak with family members. We don't know what else he gave  
15 to the DEA.

16 THE COURT: The DEA allowed him to speak to family  
17 members --

18 MR. COLON: Yes, they wrote --

19 THE COURT: -- is that what you're saying?

20 MR. COLON: That's what he actually said about a week  
21 or so ago in public. He made a statement in public about that,  
22 that he was ordered by the DEA. First of all, we saw the  
23 report. It was a report that was written maybe about 2019,  
24 maybe 2020. But he mentioned he made a public statement about  
25 this after I found out what I read and he saw that he was being

01IJPINC

1 excised from the defense or at least those supporters of the  
2 defense.

3 And yes, this is what he did. And the DEA knew about  
4 him. We don't know to what extent that continued, but he made  
5 that statement in public. There's a videotape of it in which  
6 he concedes that he was told by the DEA to do this. Now, I'm  
7 not saying that the government or at least the Justice  
8 Department or the prosecutors knew anything about that, but  
9 that's what his role was.

10 He tried to give them advice about Tony and how he  
11 could obtain pardons for him. He even mentioned you in terms  
12 of his circle of connections and influence, and it was quite  
13 interesting. I didn't believe anything that he said, but he  
14 made that statement clear to the family on various occasions.  
15 And I think he might have said something like that to me, as  
16 well, but I really didn't give it too much weight. But he  
17 posed as someone who could do something for Tony in terms of a  
18 pardon and a possible pardon for Juan Orlando.

19 And I want to add one more thing, Judge, in terms of  
20 something that was said here. I went to Honduras on two  
21 occasions. I spoke to the family, interviewed witnesses.

22 THE COURT: When was this?

23 MR. COLON: This was in July of 2022, I think. In  
24 fact, I was in Honduras at the time that the former president's  
25 son, Pepe Lobo, that his son was assassinated. Happened to be

01IJPINC

1 on the day that I left. It was sometime around July 4th, 5th,  
2 6th, or 7th. Not only was I there, but I was also accused in  
3 the social media – and I think it was by Mr. Levy who did it –  
4 of having been the conduit for the kill or the green light on  
5 Mr. Pepe Lobo's son, having received that information from my  
6 client in jail.

7 That's what they said my role was, that I brought that  
8 information from the MDC to Honduras in order to tell someone  
9 in Honduras to assassinate Pepe Lobo's son. What does that  
10 make me now? So even my name was mentioned in terms of what  
11 would happen with respect to that murder. Four individuals  
12 were killed, all four of them were either children or related  
13 to people in the political circles or the elite.

14 So this turned into basically, as we say in Spanish, a  
15 *novela*, right? Of which now I am, I guess, a complementary  
16 figure in that, with respect to what happened then. So does  
17 that make me interested or at least compromised, besides my  
18 physical health? But yes, this is what they said about me  
19 simply because I went down there and I was representing him.  
20 That was the kind of development that perhaps the government  
21 wasn't aware of, but I was caught up in that.

22 And I'll tell you something else Mr. Levy did – and  
23 this could be corroborated with the Department of Justice  
24 through the BOP – is that I got a call from a captain in the  
25 MDC that a Mr. Levy was calling up and trying to communicate

01IJPINC

1 with MDC on a constant basis about a year ago and that he was  
2 claiming that Mr. Hernandez had issued an order to execute him.  
3 And then he was --

4 THE COURT: To execute who?

5 MR. COLON: That Juan Orlando had given orders to  
6 execute Mr. Levy, and that it was being passed from Juan  
7 Orlando's phone, which he doesn't have, or my phone, which I  
8 could not take into the facility, or a computer that we were  
9 using. Mind you, a computer that he was using that was  
10 provided by MDC. So again, this is just more to, let's say,  
11 crystalize what's going on here.

12 So yes, that individual continued and continues up  
13 until this day to try to undermine the defense by either  
14 hacking or telling people to hack that GoFundMe account. But  
15 that individual had different roles at different times in this  
16 *novela*, Judge. So yes, I heard it, I saw it, and I was even  
17 the subject of some of his chicanery.

18 THE COURT: But this story from this individual about  
19 putting a hit on your client putting a hit on somebody --

20 MR. COLON: Putting a hit on him.

21 THE COURT: On him. Was about a year ago you're  
22 saying?

23 MR. COLON: I'd say about a year, within a year. But  
24 it was debunked by BOP when the captain told me they didn't  
25 have any basis to believe that he did this. And Mr. Levy was

01IJPINC

1 trying to get him segregated or punished with respect to this  
2 by putting him in punitive segregation, in the SHU. And they  
3 didn't give any credence, but that's how far he went trying to  
4 undermine our defense, his welfare, and well-being. And so  
5 this is something that the DEA at least had some knowledge of  
6 early on. How much more knowledge they gained, I have no idea.

7 THE COURT: But from your standpoint you didn't  
8 believe this guy?

9 MR. COLON: I didn't know what to believe. All I know  
10 is what MDC was telling me that Juan was giving orders to kill.

11 THE COURT: Did you believe that?

12 MR. COLON: I didn't know what to believe. All I  
13 knew, that he was in jeopardy for his security, for his safety,  
14 for his well-being, Judge. And I actually told the MDC that if  
15 they wanted to look through my phone, through the computers,  
16 feel free to do so. And they didn't take me up on that offer,  
17 Judge. I can only tell you what was told to me because they  
18 were getting very irritated, the fact that Mr. Levy was  
19 constantly texting, emailing, calling just to get this man in  
20 trouble. And I was probably part of that scenario because I  
21 was the one that was visiting him.

22 As I say, Judge, I'm going to say once again. I think  
23 you've heard me. I'm not sure that this makes any difference  
24 at this point. Mr. Hernandez does not want me to continue,  
25 especially in my physical condition and with the lack of

01IJPINC

1 resources we have. And I believe that his petition to you or  
2 his request is sincere. I wouldn't say this if it wasn't  
3 obvious that we didn't have the resources. The resources just  
4 didn't come as they did or they're supposed to come, or at  
5 least they weren't presented to me.

6 And then with me getting sick, he just does not want  
7 me to try this case, that's the point, because of my condition  
8 and the fact that I failed to visit him at times. I probably  
9 visited him over a hundred times in the last two years, I would  
10 say, so it wasn't I was deficient in it, but when I got sick,  
11 it really made a difference in my ability to see him and review  
12 this material, Judge.

13 THE COURT: Is that the COVID situation?

14 MR. COLON: No. COVID was just icing on the cake.

15 It had to do with what was put in the medical  
16 information, which you know of. I can say it if you want.

17 THE COURT: No, I have it. You're free to say  
18 whatever you want to say, but I have the material you sent.

19 MR. COLON: Right. And it was extensive.

20 THE COURT: Thank you.

21 MS. TARLOW: Your Honor, if I may?

22 THE COURT: You may.

23 MS. TARLOW: The government at no time directed  
24 Mr. Bar Levy to infiltrate the defense team. That is simply  
25 not true. Mr. Bar Levy did participate in meeting --



01IJPINC

1 THE COURT: Mr. Who?

2 MS. TARLOW: Bar Levy.

3 THE COURT: He's referred to, I thought, as Jorge  
4 Levy. Maybe I misheard it.

5 MR. COLON: It is Jorge Bar Levy, but he's had so many  
6 aliases in his life. I guess when he became a Renaissance man  
7 and became a rabbi, his name is now Jorge Bar Levy.

8 MS. TARLOW: He did at certain points in time  
9 participate in meetings with Mr. Hernandez's family and  
10 provided information to the DEA. But again, the government in  
11 no way directed him to infiltrate the defense team. And once  
12 he joined the defense team, the government did not have contact  
13 with him. He did not provide information.

14 THE COURT: What do you mean "once he joined the  
15 defense team"?

16 MS. TARLOW: When the government learned he joined the  
17 defense team.

18 THE COURT: How did he join the defense team? There's  
19 no indication that any privileged material was shared with him,  
20 so I don't know what you mean by a defense team.

21 MS. TARLOW: Yes, your Honor. To the extent that  
22 Mr. Bar Levy was consulted in any investigatory capacity by  
23 Mr. Colon, as he just described.

24 We also, I want to note for the record, we produced  
25 materials relating to the information provided by Mr. Bar Levy

01IJPINC

1 on August 5, 2022. And therefore, the defense has been well  
2 aware for more than a year and a half regarding any involvement  
3 he may have had in this case. And whatever decisions they made  
4 in continuing to consult with him was of their own making, but  
5 the government had put them on notice of information he had  
6 previously provided to it.

7 THE COURT: I'm going to ask you to your letter in  
8 which you're going to report on material produced within 60  
9 days of the trial day, I'm going to ask you to confer with your  
10 contacts within the DEA and make a representation after  
11 conferral as to whether there was any directions of any kind  
12 given to Mr. Bar Levy with regard to obtaining information.

13 MS. TARLOW: Understood, your Honor.

14 MR. COLON: Judge, I'm sorry.

15 Finally, I just want to say that I don't believe I can  
16 give him the defense that he needs in my current physical  
17 condition or medical condition. I think that's been confirmed  
18 by three physicians, Judge, and that's my opinion. I know how  
19 I'm feeling now. It's deteriorated over time. I tried to be  
20 in denial as to what I could do. But I agree that I'm not  
21 physically able to give him the defense he wants, Judge, and  
22 that he deserves.

23 THE COURT: Do you want to say that again? Because  
24 you've said this several times now.

25 MR. COLON: I won't say it again, sir.

01IJPINC

1 THE COURT: You're welcome to, if you want to keep  
2 repeating yourself. I'm not going to stop you.

3 MR. COLON: No. No, sir. No more comments, sir.

4 THE COURT: All right.

5 Is there anything further from the government?

6 MS. TARLOW: No, your Honor.

7 THE COURT: Anything further from defendant Juan  
8 Orlando Hernandez?

9 MR. COLON: No, your Honor.

10 THE COURT: Anything further from Defendant Bonilla?

11 MR. ZALTZBERG: No, not at this time, your Honor.

12 THE COURT: Defendant Pineda?

13 MR. MA: No, Judge. Thank you.

14 THE COURT: Sir, you are who?

15 DEFENDANT BONILLA: Juan Carlos Bonilla.

16 THE COURT: Okay, sir. Do you want to talk to your  
17 client before he speaks?

18 MR. ZALTZBERG: Yes, that would be great, your Honor.

19 (Counsel and defendant conferred)

20 THE COURT: Court can come to order, please. Please  
21 be seated.

22 Yes, sir. Mr. Bonilla, you wanted to say something?

23 DEFENDANT BONILLA: Yes, sir. Good morning, your  
24 Honor.

25 It pleases me that you're giving me this opportunity

01IJPINC

1 because I know how just and how strict with the law you are. I  
2 have been without liberty in the United States for about a year  
3 and a half. During that year and a half, I have suffered  
4 through so many situations which it has obligated me at this  
5 point to appeal about the lack of defense that I have. And I  
6 have struggled and I have listened to the prosecution from this  
7 country about a large amount of testimony from persons that  
8 during my career I fought against. I would like your Honor to  
9 know that I have not been, nor will I be a criminal.

10 THE COURT: All right. Mr. Bonilla, let me tell you  
11 that today is not the time to discuss your defense to the  
12 charges. You have pled not guilty, and I pledge to you and I  
13 pledge to each of the three defendants that you will each have  
14 the right to testify. No lawyer can take that away from you.  
15 The decision to testify in this case rests with you.

16 You can listen to the advice of your lawyer, but the  
17 final decision as to whether or not you take the witness stand  
18 and tell your side of the story rests with you and you alone.  
19 And if anyone interferes with that, you need to promptly tell  
20 me. Lawyers can advise you whether they think it's a good idea  
21 or a bad idea and they can explain why, but the ultimate  
22 decision is yours. You also have the right not to testify, and  
23 if you decide not to testify, no one will be permitted to draw  
24 any inference or suggestion of guilt from the fact that you  
25 decided not to testify.

01IJPINC

1 But today is not the day for you to expand on the  
2 reasons why you've entered a plea of not guilty in this case.  
3 I accept that you have pleaded not guilty.

4 DEFENDANT BONILLA: Correct, your Honor.

5 I myself, last year, I sent a letter to your Honor  
6 where I did not feel satisfied with the defense that was being  
7 provided because several situations arose during which we did  
8 not agree, and that reached to the point where in the last few  
9 times I saw that my attorney seemed irritated. I respect so  
10 that I can be respected. And because of that, I have not felt  
11 good. I have also felt that my defense has not been conducted  
12 in an adequate manner, logically, because we have a barrier,  
13 which is the language. And what is said to the interpreter can  
14 be said in a different manner. And also, that is why I make an  
15 appeal to your Honor knowing what your will is and your  
16 decisions requesting that another defense attorney be  
17 appointed.

18 I make this appeal to you because of the lack of  
19 defense that I feel I have. I even brought quite a bit of  
20 information during my work of almost 35 years of my career as  
21 an officer of the police so that it could be analyzed, and  
22 based on that a defense strategy could be based. Likewise, I  
23 have suffered threats against my family where they are in  
24 different situations where they have a very low profile, and  
25 that was before coming here and also afterwards. That is why I

01IJPINC

1 am in this situation.

2 I have also had health situations in reference to the  
3 dental issues where I have spent more than six months bleeding  
4 and I have not received the medical attention that I need where  
5 I am. Also, besides that, your Honor, I make an appeal to God  
6 and to you so that you can analyze and review my situation  
7 which I have presented, which is pro-justice and pro-truth,  
8 your Honor. Thank you very much, your Honor.

9 THE COURT: Thank you very much.

10 Let me first say, Mr. Zaltzberg, if there's an issue  
11 on the medical front, I think you know how to contact the staff  
12 at the MDC. If you don't get satisfaction and you need my  
13 intervention, please let me know, and we'll see that your  
14 client gets the medical attention that he needs, the dental  
15 attention.

16 But I'll give you an opportunity if there's any other  
17 comment you wish to make.

18 MR. ZALTZBERG: No, Judge. Just in addressing what  
19 Mr. Bonilla said, I certainly understand there's disagreements  
20 at times that come with representing any client. Most of the  
21 disagreements have to do with the way our legal system works.  
22 As the Court is now aware, because I wrote to the Court, we  
23 assigned Mr. De Castro to sort of come aboard to help bridge  
24 the gap or offer another attorney's perspective to help  
25 Mr. Bonilla understand some of the way the evidence works in

01IJPINC

1 our case, specifically as it turns on testimony.

2 THE COURT: I appointed Mr. De Castro as a member of  
3 the Criminal Justice Act Panel to advise on pretrial matters.

4 MR. ZALTZBERG: Yes, your Honor.

5 And as part of that – and I'm certain Mr. Castro can  
6 speak for himself – he's echoed what I have tried to tell  
7 Mr. Bonilla has led to some of our disagreements, just to have  
8 a legal perspective and how our legal system works here,  
9 including the fact that testimonial witnesses are oftentimes a  
10 large part of the government's case and sometimes the only part  
11 of the government's case. And while we may not love it as  
12 defense attorneys, that's how this country was built and that's  
13 how it works. And so our disagreements are on that type of  
14 level.

15 In terms of my seeming irritated or anything else, I  
16 always thought we had a good relationship. I speak to his  
17 family when he asks me to. As you can imagine, your Honor,  
18 with trial around the corner – and God bless the government,  
19 but dropping 3500 material after 3500 material on us – I'm a  
20 little more stressed than I thought I was. But I certainly  
21 have never disparaged or in any way tried to be negative with  
22 Mr. Bonilla.

23 In fact, I'm positive I probably set some sort of  
24 record in seeing my client. I see him once a week, sometimes  
25 twice a week with an interpreter every time. If an interpreter

01IJPINC

1 it unavailable, Ms. Villalona, who speaks Spanish, comes with  
2 me to translate. I have never had an issue understanding my  
3 client. He's never approached me saying he has an issue  
4 understanding me.

5 Again, I leave it to the Court. I certainly don't  
6 want to make him uncomfortable, but I have, frankly, worked  
7 very hard on his case. I continue to work very hard on his  
8 case. And I certainly understand that this is a high pressure  
9 situation. He's facing a significant sentence here. And I  
10 understand that leads to a natural friction at times, but I  
11 assure you and I know the Court's aware - I appeared before you  
12 many times - I hold myself to a high standard. Ms. Villalona  
13 has helped me immensely. Mr. De Castro, since he's come on,  
14 has been very helpful. But our goal is all the same, which is  
15 to help Mr. Bonilla.

16 THE COURT: Let me say that I did add Mr. De Castro  
17 for the purpose of advising on pretrial matters, in addition to  
18 the representation by Mr. Zaltzberg and Ms. Villalona. And the  
19 reality is the trial of this case begins on February 5. Today  
20 is the 18th of January. There is not time to bring on a  
21 different attorney for you in this case. I am confident that  
22 Mr. Zaltzberg, who correctly states has appeared before me  
23 many, many times, will vigorously and competently represent you  
24 in this matter. And I hope that Ms. Villalona and Mr. De  
25 Castro are also of assistance to you and Mr. De Castro in



01IJPINC

1 giving you some perspective on the situation we are. So I am  
2 not doing anything in terms of appointing substitute trial  
3 counsel or the like, and that's where we are there.

4 Is there anything further, Mr. Ma or Mr. Womble?

5 MR. MA: Not at this time, Judge.

6 THE COURT: All right.

7 Well, thank you all very much. So jury selection will  
8 begin on the morning of February 5. I'd ask you to get here at  
9 9:15 on February 5 in case we have any matters that we need to  
10 take up at that time, and we're going to go day-to-day to  
11 completion.

12 I haven't decided yet whether the trial day will be  
13 9:30 to 4:30 or 10:00 to 5:00, and I'll let you know what I  
14 decide on that. But typically, there is one morning break of  
15 approximately 15 minutes, a lunch break at 1:00 till 2:00, and  
16 we end at whatever the appointed ending time is. It is my  
17 practice, if there's five or ten minutes on the clock and you  
18 finish with a witness, I'm going to have you call the next  
19 witness because that expedites the trial and displays to the  
20 jury the Court's attentiveness to the jury's schedule. So  
21 that's what I anticipate here, and so your witnesses all need  
22 to be ready.

23 Mr. Colon - I'll ask each of you - have there been any  
24 plea offers sought or provided in connection with this case?

25 MR. COLON: With respect to Mr. Hernandez Alvarado, we

01IJPINC

1 have not had any discussions about that. No offers have been  
2 made by the government.

3 THE COURT: All right.

4 MR. ZALTZBERG: In regards to Mr. Bonilla, no plea  
5 offer has been made. We received a Pimentel letter, but no  
6 official offer. And as the Court is aware, he's currently  
7 facing life.

8 THE COURT: And you've communicated the content of the  
9 Pimentel letter to your client?

10 MR. ZALTZBERG: He understands what he's facing.

11 THE COURT: Mr. Ma?

12 MR. MA: Judge, we have had plea negotiations with the  
13 government, and we have had discussions with our client. A  
14 number of different offers were negotiated and discussed. We  
15 have no dispositions, and we're ready for trial.

16 THE COURT: And can the government confirm the  
17 accuracy of the representations?

18 MS. TARLOW: Yes, your Honor. That is accurate.

19 THE COURT: Are there ongoing discussions?

20 MS. TARLOW: No, your Honor, not at this time.

21 THE COURT: Okay. All right.

22 MR. MA: If I may just add, Judge, you had indicated  
23 that you have not yet decided the trial date. To the extent  
24 that you're taking requests, if I could request a 10:00 start,  
25 that just makes my life a little easier with kids at home. I

01IJPINC

1 can make 9:30. I'm just asking as a convenience.

2 THE COURT: I understand that. My paramount concern  
3 is with regard to the jury, so that's --

4 MR. MA: Understood.

5 THE COURT: But I understand your request. I'll do  
6 the best I can. All right.

7 And Mr. Colon, as I said in my order, if there's  
8 anything you need, if you need any breaks, you have any  
9 doctor's appointments you have to make, I certainly will  
10 accommodate that, so let me know.

11 There's nothing further. We are adjourned. Thank  
12 you.

13 (Adjourned)